

7-9-2013

Medical Recovery Services, LLC v. Strawn Clerk's Record Dckt. 40827

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LAW CLERK

SUPREME COURT

IN THE

OF THE

STATE OF IDAHO

Medical Recovery Services LLC

Plaintiff and

Respondent
vs.

COPY

Stephanie and Jason Shawn

Defendant and

Appellant

Appealed from the District Court of the Seventh Judicial

District of the State of Idaho, in and for Bonneville County

Hon. Dane H. Watkins Jr. District Judge

Stephen D. Hall

485 E Street Idaho Falls, ID 83402
Attorney for Appellant

Michael T. Spink

P.O. Box 639 251 E Front Street, Ste 200 Boise, ID 83701
Attorney for Respondent

FILED - COPY
Filed this JUL - 9 2013
Supreme Court By Deputy Clerk

410827

IN THE SUPREME COURT OF THE STATE OF IDAHO
IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

MEDICAL RECOVERY SERVICES, LLC, an))	
Idaho limited liability company,)	
)	
Plaintiff/Respondent,)	Case No. CV-2012-1171
)	
vs.)	Docket No 40827
)	
STEPHANIE STRAWN and JASON STRAWN))	
Wife and Husband,)	
)	
)	
Defendant/Appellant.)	
_____)	

* * * * *

CLERK'S RECORD ON APPEAL

* * * * *

Appeal from the District Court of the
Seventh Judicial District of the State of Idaho,
in and for the County of Bonneville

HONORABLE DANE H WATKINS JR., District Judge.

* * * * *

Attorney for Appellant

Bryan Zollinger
Smith, Driscoll & Associates, PLLC
P.O. Box
414 Shoup
Idaho Falls, ID 83405

Attorney for Respondent

Stephanie Strawn Self-litigant
Jason Strawn Self-litigant
248 Valley Dr.
Idaho Falls, ID 83401

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ROA Report Printed June 04, 2013	01

Medical Recovery Services LLC vs. Stephanie D Strawn, Jason Strawn

Date	Code	User		Judge
2/27/2012	SMIS	DOOLITTL	Summons Issued (2)	Michelle R. Mallard
	NCOC	DOOLITTL	New Case Filed-Other Claims	Michelle R. Mallard
	NOAP	DOOLITTL	Plaintiff: Medical Recovery Services LLC Notice Of Appearance Bryan N. Zollinger	Michelle R. Mallard
		DOOLITTL	Filing: A - All initial civil case filings of any type not listed in categories B-H, or the other A listings below Paid by: Zollinger, Bryan N. (attorney for Medical Recovery Services LLC) Receipt number: 0009986 Dated: 2/28/2012 Amount: \$88.00 (Check) For: Medical Recovery Services LLC (plaintiff)	Michelle R. Mallard
	COMP	DOOLITTL	Complaint Filed	Michelle R. Mallard
3/8/2012	ASRV	CEARLY	(2) Affidavit of Service - 3-6-12 Jason Strawn And Stephanie Strawn By Serving Stephanie Strawn	Michelle R. Mallard
4/10/2012	APPL	LYKE	Application for Entry of Default	Michelle R. Mallard
	APDJ	LYKE	Application For Default Judgment	Michelle R. Mallard
	AFFD	LYKE	Affidavit in Support of Application for Default Judgment	Michelle R. Mallard
4/13/2012	OFDJ	ANDERSEN	Order For Default	Michelle R. Mallard
	DFJDG	ANDERSEN	Default (entered by Judge)	Michelle R. Mallard
	CDIS	ANDERSEN	Default Judgment, \$770.76, against both defendants	Michelle R. Mallard
	STATUS	ANDERSEN	Case Status Changed: Closed	Michelle R. Mallard
	AFFD	SOLIS	Affidavit In Support Of Writ Of Execution	Dane H Watkins Jr
4/17/2012	MOTN	CEARLY	Motion For Reconsideration	Michelle R. Mallard
5/30/2012		CEARLY	Filing: L2 - Appeal, Magistrate Division to District Court Paid by: Smith Driscoll & Associates Receipt number: 0026239 Dated: 6/1/2012 Amount: \$53.00 (Check) For: Medical Recovery Services LLC (plaintiff)	Michelle R. Mallard
	JUDGE	CEARLY	Judge Change	Dane H Watkins Jr
	APDC	CEARLY	Notice Of Appeal Filed In District Court	Dane H Watkins Jr
6/1/2012		CEARLY	Notice of Assigned Judge and Case Number	Dane H Watkins Jr
6/5/2012		LMESSICK	Briefing Schedule and Notice of Time for Hearing Oral Argument	Dane H Watkins Jr
	HRSC	LMESSICK	Hearing Scheduled (Appeal 09/06/2012 09:00 AM) Oral Argument	Dane H Watkins Jr
	STATUS	LMESSICK	Case Status Changed: Closed pending clerk action	Dane H Watkins Jr
6/6/2012	APCG	SOLIS	Application For Continuing Garnishment	Dane H Watkins Jr
	WRIT	SOLIS	Writ Issued \$793.53 Bonneville County	Dane H Watkins Jr

Date: 6/6/2013

Seventh Judicial District Court - Bonneville County

User: PADILLA

Time: 08:57 AM

ROA Report

Page 2 of 3

Case: CV-2012-0001171-OC Current Judge: Dane H Watkins Jr

Medical Recovery Services LLC vs. Stephanie D Strawn, etal.

Medical Recovery Services LLC vs. Stephanie D Strawn, Jason Strawn

Date	Code	User	Judge
6/6/2012		SOLIS	Miscellaneous Payment: Writs Of Execution Paid by: Smith Driscoll Receipt number: 0027649 Dated: 6/7/2012 Amount: \$2.00 (Check)
7/9/2012	MOTN	HUMPHREY	Plaintiff's Motion To Consolidate And Reset Briefing Schedules
	MOTN	HUMPHREY	Plaintiff's Motion For Extension Of Time For Filing Appellant's Brief
	MOTN	HUMPHREY	Amended Motion To Consolidate And Reset Briefing Schedules
8/14/2012	ORDR	LMESSICK	Order Consolidating Case: Amended Briefing Schedule and Notice of Time for Hearing Oral Argument
8/28/2012	NOTC	DOOLITTL	Plaintiff's Amended Notice of Appeal
9/12/2012	BRIF	DOOLITTL	Plaintiff's Brief Filed on Appeal
10/3/2012	WRTS	SOLIS	Writ returned, Satisfied
11/1/2012	DCHH	LMESSICK	Hearing result for Appeal scheduled on 11/01/2012 08:30 AM: District Court Hearing Held Court Reporter: Karen Konvalinka Number of Transcript Pages for this hearing estimated: Oral Argument 50 pages
11/8/2012	MEMO	LMESSICK	Memorandum Decision and Order Re: Appeal
11/13/2012	HRSC	LMESSICK	Hearing Scheduled (Motion 12/05/2012 09:00 AM) Reconsider
	STATUS	LMESSICK	Case Status Changed: Reopened
11/21/2012	MOTN	DOOLITTL	Plaintiff's Motion for Reconsideration
	BRIF	DOOLITTL	Plaintiff's Brief Filed in Support of Motion for Reconsideration
	NOTH	DOOLITTL	Plaintiff's Notice Of Hearing 12-20-12 @ 9:00 a.m. {Motion for Reconsideration}
12/20/2012	DCHH	LMESSICK	Hearing result for Motion scheduled on 12/20/2012 09:00 AM: District Court Hearing Held Court Reporter: Karen Konvalinka Number of Transcript Pages for this hearing estimated: Reconsider 50 pages
	MINE	LMESSICK	Minute Entry Hearing type: Motion Hearing date: 12/20/2012 Time: 9:00 am Courtroom: Court reporter: Minutes Clerk: Lettie Messick Tape Number: Party: Medical Recovery Services LLC, Attorney: Bryan Zollinger
1/22/2013	MEMO	LMESSICK	Memorandum Decision and Order Re; Motion for Reconsideration
3/4/2013	NOTC	DOOLITTL	Notice of Appeal to Supreme Court

Date: 6/6/2013

Seventh Judicial District Court - Bonneville County

User: PADILLA

Time: 08:57 AM

ROA Report

Page 3 of 3

Case: CV-2012-0001171-OC Current Judge: Dane H Watkins Jr
Medical Recovery Services LLC vs. Stephanie D Strawn, etal.

Medical Recovery Services LLC vs. Stephanie D Strawn, Jason Strawn

Date	Code	User	Judge
3/4/2013		DOOLITTL	Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: Zollinger, Bryan N. (attorney for Medical Recovery Services LLC) Receipt number: 0010828 Dated: 3/6/2013 Amount: \$109.00 (Check) For: Medical Recovery Services LLC (plaintiff) Dane H Watkins Jr
3/19/2013	APSC	PADILLA	Appealed To The Supreme Court Dane H Watkins Jr
	CERTAP	PADILLA	Clerk's Certificate of Appeal Dane H Watkins Jr
	BNDC	PADILLA	Bond Posted - Cash (Receipt 13525 Dated 3/19/2013 for 100.00) Dane H Watkins Jr

DISTRICT COURT
MAGISTRATE DIVISION
BONNEVILLE COUNTY, IDAHO

12 FEB 27 PM 4:40

Bryan D. Smith, Esq. *ISB # 4411*
Bryan N. Zollinger *ISB # 8008*
SMITH, DRISCOLL & ASSOCIATES, PLLC
414 Shoup Avenue
P.O. Box 50731
Idaho Falls, Idaho 83405
(208) 524-0731

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,
an Idaho limited liability company

Plaintiff,

vs.

**STEPHANIE STRAWN and JASON
STRAWN, wife and husband**

Defendants.

Case No. CV-12-1171

COMPLAINT

Fee: \$88.00

COMES NOW plaintiff, Medical Recovery Services, LLC, and for a claim against
defendants, alleges as follows:

1. The plaintiff is an Idaho limited liability company qualified to do business in the State of Idaho.
2. The defendant, Stephanie Strawn is an individual residing in the State of Idaho.
3. The defendant, Jason Strawn is an individual residing in the State of Idaho.
4. At all times mentioned herein the plaintiff was, and still is, a licensed and bonded collector under the laws of the State of Idaho, and before the commencement of this action the

debt herein sued upon was assigned by Community Care to the plaintiff for the purpose of collection. The plaintiff is now the holder thereof for such purposes.

5. The defendants are husband and wife who incurred the debt as alleged herein for community purposes.

6. The defendants are indebted to the plaintiff by reason of the allegations herein and owe the plaintiff in the following stated amounts:

COMMUNITY CARE

Principal Amount Owing	\$ 268.40
Prejudgment Interest	<u>\$ 35.96</u>
Subtotal	\$ 304.36

TOTAL **\$ 304.36**

7. The plaintiff is entitled to further prejudgment interest from the date the complaint is filed until judgment is entered.

8. Despite the plaintiff's requests and demands, and without offering any reason or objection to the bill, the defendants have failed to pay the indebtedness in full.

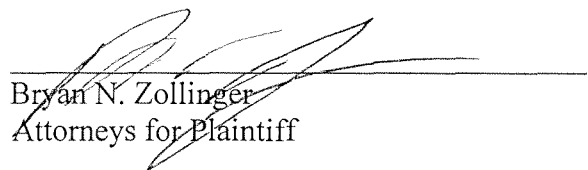
9. To obtain payment of the obligation due, the plaintiff has been required to retain the services of Smith, Driscoll & Associates PLLC, attorneys at law. This action arises from an open account and/or from services provided and written demand for payment on the defendants has been made more than 10 days prior to commencing this action. Moreover, the parties have entered into a written contract in which the defendants have agreed to pay as attorney's fees the amount of attorney's fees sought in this complaint. Accordingly, pursuant to Idaho Code § 12-120(1), 12-120(3), and I.R.C.P. 54(e)(1), the plaintiff is entitled to recover the plaintiff's attorney's fees incurred herein in the sum of \$350.00 if judgment is taken by default and such greater amount as may be evidenced to the court if this claim is contested. Pursuant to Idaho

Rules of Civil procedure § 54(d)(1) the plaintiff is further entitled to recover the plaintiff's costs incurred herein.

WHEREFORE, the plaintiff demands judgment against the defendants, and each of them, for the principal sum of \$268.40, together with legal interest on said sum in the amount of \$35.96, the filing fee of \$88.00 and attorney's fees incurred herein in the sum of \$350.00, for a combined total of \$742.36 plus the costs of suit to be proven to the court, and for such other and further relief as is equitable and just.

DATED: 21st February, 2012.

SMITH, DRISCOLL & ASSOCIATES, PLLC


Bryan N. Zollinger
Attorneys for Plaintiff

NOTICE UNDER FEDERAL FAIR DEBT COLLECTION
PRACTICES ACT 15 U.S.C. §§ 1692a to 1692o

Stephanie and Jason Strawn
248 Valley Dr
Idaho Falls, ID 83401

1. Amount of Debt exclusive of interest: \$268.40
2. Name of Creditor: Medical Recovery Services, LLC
3. Unless you dispute the validity of the above-described debt, or a portion thereof, within 30 days of your receipt of this letter, we will assume that the debt is valid.
4. If you notify us, in writing, within 30 days of your receipt of this letter that you dispute the debt, or a portion thereof, we will obtain verification of the debt, or a copy of any judgment, and will mail you a copy of the verification or judgment.
5. If you request, in writing, within 30 days of your receipt of this letter, we will provide you with the name and address of the original creditor, if different from the current creditor described above.
6. This Notice informs you of specific rights to information under federal law. Any judgment in this legal action will not be taken by default until 30 days after you have been served a summons and a copy of the complaint. Thus, no judgment will be taken within 30 days of this Notice. The 30 days allowed by this Notice are not in addition to the requirements of state law.

NOTE: This is an attempt to collect a debt. Any information obtained will be used for that purpose.

12 MAR -7 PM 4:32

IN THE DISTRICT COURT OF THE 7th JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

Medical Recovery Services, LLC,

Plaintiff,

vs.

Stephanie and Jason Strawn,

Defendants.

Case Number: CV-12-1171

AFFIDAVIT OF PERSONAL RETURN
OF SERVICE

I, Stephane Swem first being duly sworn, deposes and states as follows:

1. I am over the age of 18 and make this Affidavit of Personal Service on my personal knowledge;
2. On March 6th, 2012, I delivered a copy of the Summons, Complaint, filed in this matter on Jason Strawn by leaving copies thereof at said person's dwelling house or usual place of abode with Stephanie Strawn, a person over the age of 18 years and then residing therein at 248 Valley Drive, Idaho Falls, Idaho.

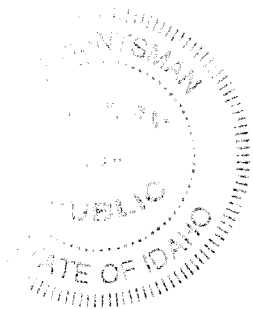
Dated: 3/7/12

Stephane Swem
Stephane Swem

SUBSCRIBED AND SWORN before me this 3-7-2012

(SEAL)

Jadei Hutzman
Notary Public for the State of Idaho
Residing at: Idaho Falls
My Commission Expires: 7-15-2017



12 MAR -7 PM 4:32

IN THE DISTRICT COURT OF THE 7th JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

Medical Recovery Services, LLC,

Plaintiff,

vs.

Stephanie and Jason Strawn,

Defendants.

Case Number: CV-12-1171

AFFIDAVIT OF PERSONAL RETURN
OF SERVICE

I, Stephane Swem, first being duly sworn, deposes and states as follows:

1. I am over the age of 18 and make this Affidavit of Personal Service on my personal knowledge;
2. On March 6th 2012, I delivered a copy of the Summons, Complaint, filed in this matter on Stephanie Stawn personally at her residence located at 248 Valley Drive, Idaho Falls, Idaho

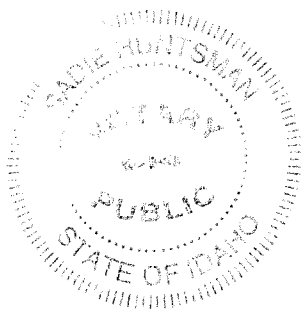
Dated: 3/7/12

STL
Stephane Swem

SUBSCRIBED AND SWORN before me this 3-7-2012.

(SEAL)

Sadie Huntsman
Notary Public for the State of Idaho
Residing at: Idaho Falls
My Commission Expires: 9-15-2017



Bryan D. Smith, Esq. *ISB # 4411*
Bryan N. Zollinger *ISB #8008*
SMITH, DRISCOLL & ASSOCIATES, PLLC
414 Shoup Avenue
P.O. Box 50731
Idaho Falls, Idaho 83405
(208) 524-0731

DISTRICT COURT
MAGISTRATE DIVISION
BONNEVILLE COUNTY, IDAHO
12 APR 10 PM 4:42

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,
an Idaho limited liability company,

Plaintiff,

vs.

STEPHANIE STRAWN and JASON
STRAWN, wife and husband

Defendants.

Case No. CV-12-1171

AFFIDAVIT IN SUPPORT OF
APPLICATION FOR DEFAULT
JUDGMENT

STATE OF IDAHO

)

)ss:

County of Bonneville

)

I, Bryan N. Zollinger, state and declare the following under oath:

1. I represent the plaintiff.
2. The plaintiff filed a complaint against the Defendants on February 27, 2012.
3. The amount due from the Defendants is the sum certain of \$852.36, said amount

being itemized as follows, to-wit:

Principal	\$268.40
Interest	\$35.96
Attorney's fee	\$350.00
Filing fee	\$88.00

Service fee	\$110.00
Amount Paid	\$-0.00
TOTAL	<hr/> \$852.36

4. The amount shown by the above accounting is justly due and owing, and no part of said balance has been paid except as otherwise shown; the disbursements sought to be taxed have been made in this action or will necessarily be made or incurred herein.

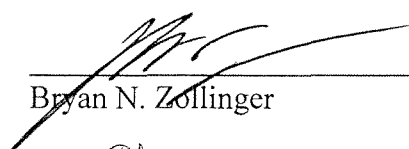
5. To the best of my knowledge the Defendant(s) is not an infant, incompetent person, nor is the defendant serving in the United States Military.

6. The plaintiff has calculated the attorney's fee set forth above based on a written contract with the defendants in which the defendants have agreed to pay the attorney's fee requested above. In this regard, a true and correct copy of a written contract between the defendants and the original creditor is attached as Exhibit "A." Pursuant to the terms of this written contract, the defendants have agreed to pay the attorney's fee requested above, and the court should award the requested attorney fee amount pursuant to I.R.C.P. 54(e)(1).

7. Accordingly, the plaintiff requests that the court enter a default judgment in the total amount of \$852.36 pursuant to the Application For Default Judgment on file herein.

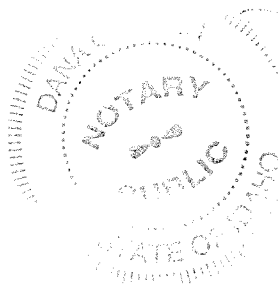
DATED this 9th day of April, 2012.

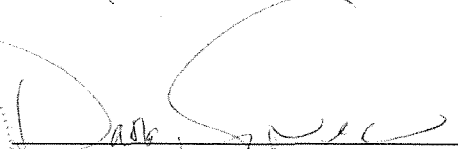
SMITH, DRISCOLL & ASSOCIATES, PLLC


Bryan N. Zollinger

SUBSCRIBED AND SWORN TO before me this 9th day of April, 2012.

(SEAL)




Notary Public for the State of Idaho

Residing at: Idaho Falls, ID

My Commission Expires: 10-12

Exhibit “A”



2725 Channing Way
Idaho Falls, ID 83404
(208) 525-8448

72 East Main
Rexburg, ID 83440
(208) 359-1770

765 S. Utah Ave.
Idaho Falls, ID 83402
(208) 525-2600

167 E. First South
Rigby, ID 83442
(208) 745-8747

1595 Yellowstone Avenue.
Pocatello, ID 83201
(208) 233-0032

-PATIENT SIGN-IN FORM-

PLEASE PRINT

PATIENT NAME <i>Stephanie Strawn</i>	PATIENT GUARDIAN
PATIENT AGE <i>34</i>	TIME <i>12:40</i>

To respect your privacy, please, tell us which of the following numbers we should call to communicate with you regarding Appointment Reminders, Lab Results, Etc. Only list the phone number(s), you want us to call.

Home Phone <i>N/A</i>	Work Phone <i>N/A</i>	Cell Phone <i>208-201-9214</i>	Other
--------------------------	--------------------------	-----------------------------------	-------

I acknowledge that I have been presented with a copy of Community Care's Notice of Privacy Rights.

JMS

AUTHORIZED SIGNATURE

4/28/11

DATE

CONSENT FOR ASSESSMENT & TREATMENT

I request and authorize the clinical staff of the Community Care Center to provide me with necessary medical assessment and treatment.

PROMISE TO PAY

I agree to pay my account in full at the time of services unless before services are performed Community Care agrees to other payment arrangements. I understand that Community Care will submit insurance benefits for payment only as a courtesy for me. I agree to pay 18% interest on the outstanding balance on my account with interest to commence 80 days after services even if payment from my insurance company is pending. I also agree to pay an additional service charge of 50 cents per month on my account. If Community Care assigns my account to a collection agency for collections all reasonable cost and attorney's fees incurred to collect on my account. I agree that a \$20.00 collection fee shall be added to my account as a reasonable cost if Community Care assigns my account to a collection agency. I agree to pay as a reasonable attorney's fee \$350 or 35% of the principal and interest on my account balance, whichever is greater, if my account is assigned to a collection agency and suit is filed to recover payment on my account.

ASSIGNMENT & RELEASE

I hereby authorize my insurance benefits to be paid directly to the physician and I am financially responsible for non-covered services. I also authorize the physician to release any information required to process this claim.

JMS

AUTHORIZED SIGNATURE

4/28/11

DATE

MEDICARE PATIENT SIGNATURE AUTHORIZATION

I request that payment of authorized Medicare benefits to be made either to me or on my behalf to Community Care for any services furnished by the physician/supplier. I authorize any holder of medical information about me to release to the Health Care Financing Administration and its agents for any information needed to determine these benefits payable for related services.

JMS

AUTHORIZED SIGNATURE

4/28/11

DATE

Bryan D. Smith, Esq. *ISB # 4411*
Bryan N. Zollinger *ISB #8008*
SMITH, DRISCOLL & ASSOCIATES, PLLC
P.O. Box 50731
Idaho Falls, Idaho 83405
(208) 524-0731

BONNEVILLE COUNTY
IDAHO
2012 APR 13 PM 2:17

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,
an Idaho limited liability company,

Plaintiff,
vs.

STEPHANIE STRAWN and JASON
STRAWN, wife and husband

Defendants.

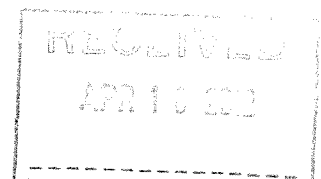
Case No. CV-12-1171

DEFAULT JUDGMENT

The Defendant(s), Stephanie and Jason Strawn, having been regularly served with process and having failed to appear and plead to Plaintiff's Complaint on file herein, the time allowed by law for so pleading having expired, it appearing that said Defendant(s) is/are not an infant or incompetent person(s) and an affidavit of non-military service having been filed herein, and it appearing by the affidavit of Bryan N. Zollinger, attorney for Plaintiff, that Plaintiff is entitled to the entry of default and judgment herein;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that default shall be entered and that Plaintiff have and recover from the Defendant(s) the sum of ~~\$852.36~~, the amount being itemized as follows:

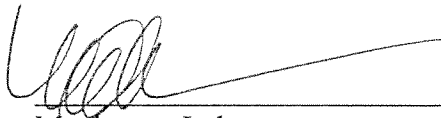
\$770.76
uu



Principal	\$268.40
Interest	\$35.96
Attorney's fee (based on contract)	\$350.00 <i>268.40</i>
Filing fee	\$88.00
Service fee	\$110.00
Amount Paid	\$-0.00
TOTAL	<u>\$852.36</u> <i>770.76</i>

upon which sum interest shall accrue at the rate provided by law, and upon which judgment execution may issue.

DATED this _____ day of _____, 2012.


Magistrate Judge

CERTIFICATE OF SERVICE

I hereby certify that I am the clerk of the above-entitled court, and that on the _____ day of _____, 2012, I served a true and correct copy of the foregoing **DEFAULT JUDGMENT** on the persons listed below by mailing, with the correct postage thereon, or by causing the same to be hand delivered.


Persons Served:

Bryan D. Smith
Smith, Driscoll & Associates PLLC
P.O. Box 50731
Idaho Falls, Idaho 83405

☐ Courthouse Box
☒ Mail

Stephanie and Jason Strawn
248 Valley Dr
Idaho Falls, ID 83401

☐ Hand ☒ Mail


Clerk

APR 13 2012

Bryan D. Smith, Esq. *ISB # 4411*
Bryan N. Zollinger *ISB #8008*
SMITH, DRISCOLL & ASSOCIATES, PLLC
414 Shoup Avenue
P.O. Box 50731
Idaho Falls, Idaho 83405
(208) 524-0731

BONNEVILLE COUNTY
IDAHO
2012 APR 13 PM 2:17

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,
an Idaho limited liability company,

Plaintiff,

vs.

STEPHANIE STRAWN and JASON
STRAWN, wife and husband


Defendants.

Case No. CV-12-1171

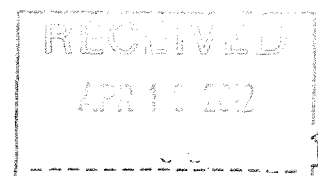
DEFAULT

IN THIS ACTION, the Defendants, Stephanie and Jason Strawn, having been regularly served with process, and having failed to appear or file a responsive pleading to plaintiff's complaint on file herein, and the time allowed by law for filing a responsive pleading having expired, upon application of Smith, Driscoll & Associates PLLC, attorneys for the plaintiff, the default of the said Defendants is hereby duly entered according to law.

DATED this _____ day of _____, 2012.



Magistrate Judge



Bryan D. Smith, Esq. *ISB # 4411*
Bryan N. Zollinger *ISB #8008*
SMITH, DRISCOLL & ASSOCIATES, PLLC
P.O. Box 50731
Idaho Falls, Idaho 83405
(208) 524-0731

BONNEVILLE COUNTY
IDAHO

2012 APR 13 PM 2:17

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,
an Idaho limited liability company,

Plaintiff,

vs.

STEPHANIE STRAWN and JASON
STRAWN, wife and husband

Defendants.

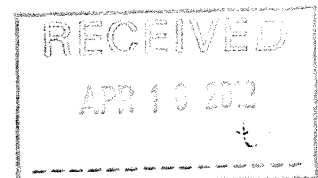
Case No. CV-12-1171

ORDER FOR DEFAULT ENTRY

The plaintiff, Medical Recovery Services, LLC, by its attorneys of record, having moved this Court for a determination and entry of default and judgment against the above-entitled defendant(s), Stephanie and Jason Strawn and the Court having reviewed the Court's file and all of the pleadings therein, the Court makes the following findings:

That the Defendants, Stephanie and Jason Strawn were duly and regularly served with process pursuant to Rule 4 of the Idaho Rules of Civil Procedure, as shown by the Affidavit of Service on file herein;

That the time prescribed by Rule 4 of the Idaho Rules of Civil Procedure, for appearance and answer or other pleading by the said Defendants, Stephanie and Jason Strawn, has elapsed without the defendants' appearance or filing a pleading of any nature whatsoever;



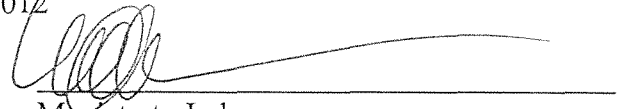
That the plaintiff's Complaint is deemed admitted pursuant to Idaho Rules of Civil Procedure, Rule 8(d), for failure to respond by the defendants;

That there is due and owing from the said defendant(s) to the said plaintiff the sum of ~~\$852.36~~ ^{\$770.76}, plus all applicable accrued prejudgment interest, pursuant to the Application for Judgment on file herein;

Based upon the above findings, it is hereby;

ORDERED, ADJUDGED AND DECREED, AND THIS DOES ORDER, ADJUDGE AND DECREE that the Default of the said defendants, be, and hereby is, determined and adjudged, and the Clerk is directed to enter the default of record in this action.

DATED this _____ day of _____, 2012


Magistrate Judge

CERTIFICATE OF SERVICE

I hereby certify that I am the clerk of the above-entitled court, and that on the _____ day of _____, 2012, I served a true and correct copy of the foregoing **ORDER FOR DEFAULT ENTRY** on the persons listed below by mailing, with the correct postage thereon, or by causing the same to be hand delivered.


Persons Served:

Bryan D. Smith
Smith, Driscoll & Associates PLLC
P.O. Box 50731
Idaho Falls, Idaho 83405

☒ Box ☐ Mail

Stephanie and Jason Strawn
248 Valley Dr
Idaho Falls, ID 83401

☐ Hand ☒ Mail


APR 13 2012
Clerk

Bryan N. Zollinger
ISB #8008
SMITH, DRISCOLL & ASSOCIATES, PLLC
414 Shoup Avenue
P.O. Box 50731
Idaho Falls, Idaho 83405
(208) 524-0731

DISTRICT COURT
MAGISTRATE DIVISION
BONNEVILLE COUNTY, IDAHO

12 MAY 30 PM 4: 02

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,
an Idaho limited liability company,

Plaintiff,

Vs.

STEPHANIE STRAWN and JASON
STRAWN, wife and husband

Defendants.

Case No. CV-12-1171

NOTICE OF APPEAL

TO THE ABOVE NAMED RESPONDENT:

NOTICE IS HEREBY GIVEN THAT:

1. The above-named appellant, MEDICAL RECOVERY SERVICES, LLC, an Idaho limited liability company, appeals against the above-named respondent, STEPHANIE STRAWN and JASON STRAWN, wife and husband, to the District Court of the Seventh Judicial District of the State of Idaho, in and for the County of Bonneville on the Motion for Reconsideration denied on May 23, 2012 by MAGISTRATE Michelle Mallard, presiding over the MAGISTRATE Court of the SEVENTH Judicial District of the State of Idaho, in and for the County of Bonneville filed with the court May 23, 2012.

NOTICE OF APPEAL - 1

2. Appellant has the right to appeal to the District Court, and the memorandum decisions, orders, and judgment described in paragraph 1 above are subject to appeal pursuant to Rule 11(a), Idaho Appellate Rules.

3. The issues which the appellant intends to assert in the appeal are the following:

a. Did the MAGISTRATE court commit reversible error when it did not award attorney's fees on default in an amount agreed to by the parties pursuant to a written contract?

4. There has been no order entered sealing any portion of the record in this case.

5. The appellant requests no transcript be prepared on appeal.

6. The appellant requests the following documents to be included in the clerk's record in addition to those automatically included under Rule 28, Idaho Appellate Rules: The entire MAGISTRATE court file.

7. I certify:

(a) That a copy of this notice of appeal has been served on the reporter;

(b) That the appellate filing fee has been paid;

(c) That service has been made upon all parties required to be served pursuant to Rule 20, Idaho Appellate Rules.

DATED this 30 day of May, 2012.

SMITH, DRISCOLL & ASSOCIATES, PLLC

By: 

Bryan N. Zollinger
Attorneys for Appellant

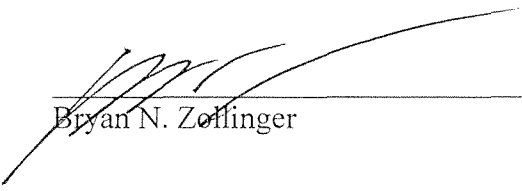
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30 day of May, 2012, I caused a true and correct copy of the forgoing **NOTICE OF APPEAL** to be served, by placing the same in a sealed envelope and depositing it in the U.S. Mail, postage prepaid, or hand delivery, facsimile transmission or overnight delivery, addressed to the following:

PARTIES SERVED:

- ☒ U.S. Mail
- ☐ Facsimile
- ☐ Hand Delivery
- ☐ Overnight Delivery

Stephanie and Jason Strawn
248 Valley Dr
Idaho Falls, ID 83401


Bryan N. Zollinger

Bryan N. Zollinger ISB #8008
SMITH, DRISCOLL & ASSOCIATES, PLLC
414 Shoup Avenue
P.O. Box 50731
Idaho Falls, Idaho 83405
(208) 524-0731

DISTRICT COURT
MAGISTRATE DIVISION
BONNEVILLE COUNTY, IDAHO
12 JUN -6 PM 4:15

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,
an Idaho limited liability company,

Plaintiff,
Vs.

STEPHANIE STRAWN and JASON
STRAWN, wife and husband

Defendants.

Case No. CV-12-1171

AFFIDAVIT IN SUPPORT OF WRIT OF
EXECUTION

STATE OF IDAHO)
)ss:
County of Bonneville)

Bryan N. Zollinger, being first duly sworn, deposes and says:

1. I have personal knowledge of the facts stated herein as attorney for the plaintiff in the above entitled action.

2. Judgment was entered herein on April 13, 2012 in the sum of \$770.76. The cause of action arose after July 1, 1987, and therefore, the judgment thereon bears interest at the rate which is in effect on the date of entry of the judgment. (The rate changes July 1 of each year as provided by Idaho Code § 28-21-104 for all judgments declared during the succeeding 12 months.) The applicable rate for the judgment in this matter is 5.25% per annum.

F:\CLIENTS\BDS\Collections\MRS\Files\7341.07361\Pleadings\120606 Execution.docx

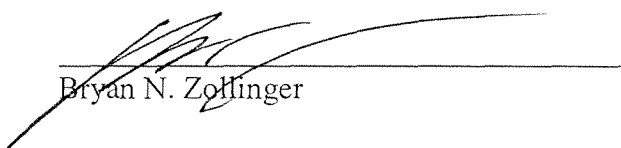
3. Therefore, the court should issue the writ in the amount of \$793.53 broken down as follows:

Unpaid Judgment	\$770.76
Accrued Interest	\$0.77
Recording Fee	\$20.00
Execution Fee(s)	\$2.00
Payments	\$- 0.00
TOTAL	\$793.53

4. The fees listed above were actually and necessarily incurred in the post-judgment collection of the judgment.

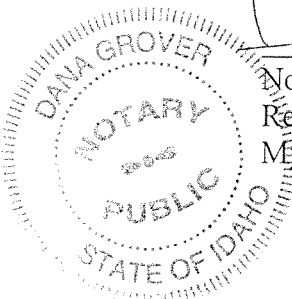
DATED: June 6, 2012.

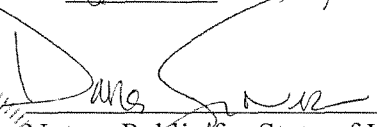
SMITH, DRISCOLL & ASSOCIATES, PLLC


Bryan N. Zollinger

SUBSCRIBED AND SWORN to before me on 6th June, 2012.

(SEAL)




Notary Public for State of Idaho
Residing at : Waho Falls, ID
My commission expires: 1010-12

Bryan N. Zollinger *ISB #8008*
SMITH, DRISCOLL & ASSOCIATES, PLLC
414 Shoup Avenue
P.O. Box 50731
Idaho Falls, Idaho 83405
(208) 524-0731

BONNEVILLE COUNTY, IDAHO
2012 JUL -6 PM 4:45

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF BONNEVILLE
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC, an Idaho
limited liability company,

Plaintiff,

vs.

STEPHANIE STRAWN and JASON STRAWN, wife
and husband

Defendants.

Case No. CV-12-1171

AFFIDAVIT OF BRYAN N. ZOLLINGER

STATE OF IDAHO

)

)ss:

County of Bonneville

)

I, Bryan N. Zollinger, state and declare the following under oath:

(1) I am one of the attorneys for Plaintiff/Appellant in the above-referenced matter.

(2) I make this affidavit on my own personal knowledge.

(3) Appellant's Brief is currently due to be filed by July 10, 2012.

(4) Appellant has received no previous extensions of time in connection with Appellant's

Brief.

(5) The requested extension is necessary because I have filed a motion to consolidate this
appeal with three other appeals dealing with the same facts and an identical legal question.

(6) Appellant requests an extension until thirty-five (35) days after the currently pending motion to consolidate is decided or thirty-five (35) days from the date that this extension is decided.

(7) If the extension is granted, there is no foreseeable reason why Appellant would not timely file its Appellant's Brief by the proposed deadline.

Further your affiant sayeth naught.

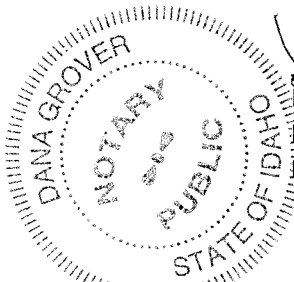
DATED this 6th day of July, 2012.

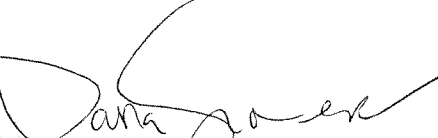
SMITH, DRISCOLL & ASSOCIATES, PLLC


Bryan N. Zollinger

SUBSCRIBED AND SWORN TO before me this 6th day of July, 2012.

(SEAL)




Notary Public for the State of Idaho
Residing at: Idaho Falls, ID
My Commission Expires: 10/01/12

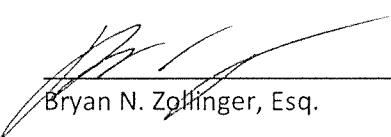
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 6th day of July, 2012, I caused a true and correct copy of the foregoing AFFIDAVIT OF BRYAN N. ZOLLINGER to be served, by placing the same in a sealed envelope and depositing it in the United States Mail, postage prepaid, or hand delivery, facsimile transmission or overnight delivery, addressed to the following:

Persons Served:

- ☒ U.S. Mail
☐ Facsimile
☐ Hand Delivery
☐ Overnight Delivery

Stephanie and Jason Strawn
248 Valley Dr
Idaho Falls, ID 83401


Bryan N. Zollinger, Esq.

2012 AUG 14 PM 1:38
DISTRICT COURT
7TH JUDICIAL DISTRICT
BONNEVILLE COUNTY ID

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

MEDICAL RECOVERY SERVICES, LLC,)
an Idaho limited liability company)

Plaintiff/Appellant,)

-vs-)

STEPHANIE STRAWN and JASON)
STRAWN, wife and husband,)

Defendants/Respondents.)

Case No. CV-2012-1171

ORDER CONSOLIDATING CASES;
AMENDED BRIEFING SCHEDULE
AND NOTICE OF TIME
FOR HEARING ORAL ARGUMENT

MEDICAL RECOVERY SERVICES, LLC,)
an Idaho limited liability company)

Plaintiff/Appellant,)

-vs-)

BRANDON LEWIS AND RENEE LEWIS,)
husband and wife,)

Defendants/Respondents.)

Case No. CV-2012-2164

MEDICAL RECOVERY SERVICES, LLC,)
an Idaho limited liability company)

Plaintiff/Appellant,)

-vs-)

JOSEPH KNIGHT,)

Defendant/Respondent.)

Case No. CV-2012-2478

An Amended Motion to Consolidate and Reset Briefing Schedules was filed by counsel for Appellant in each of the appeals listed above, requesting this Court for an order consolidating the above entitled appeals for all purposes of briefing and oral argument. Therefore good cause appearing,

IT IS HEREBY ORDERED that Appellant's Amended Motion to Consolidate and Resent Briefing Schedules is GRANTED and case Nos. CV-2012-1171, CV-2012-2164 and CV-2012-2478 shall be consolidated for appellate purposes and all documents filed after the date of this Order shall bear all case numbers.

NOW, THEREFORE, you are notified that pursuant to Rule 83(v), I.R.C.P., and Rule 34, I.A.R., appellant's brief must be filed within thirty-five (35) days of the date of this notice; respondent's brief shall be filed within twenty-eight (28) days after service of appellant's brief; and any reply brief shall be filed within twenty-one (21) days after service of respondent's brief.

Oral argument shall be heard on November 1, 2012, at 8:30 a.m. in District Courtroom IV of the Bonneville County Courthouse. Oral argument shall be limited to thirty (30) minutes for appellant (including rebuttal argument) and thirty (30) minutes for respondent.

DATED this 8 day of August, 2012.



DANE H. WATKINS, JR.
District Judge

CERTIFICATE OF SERVICE

I hereby certify that on this 14 day of August, 2012 I did send a true and correct copy of the forgoing document upon the parties listed below by mailing, with the correct postage thereon; by causing the same to be placed in the respective courthouse mailbox; or by causing the same to be hand-delivered.

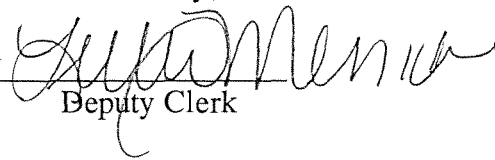
Bryan Zollinger
SMITH DRISCOLL & ASSOCIATES, PLLC
PO Box 50731
Idaho Falls, ID 83405

Stephanie and Jason Strawn
248 Valley Dr.
Idaho Falls, ID 83401

Brandon and Renee Lewis
1142 E 21st Street
Idaho Falls, ID 83404

Joseph Knight
1542 Laprele Street Apt. 53
Idaho Falls, ID 83402

RONALD LONGMORE
Clerk of the District Court
Bonneville County, Idaho

By 
Deputy Clerk

Bryan N. Zollinger

ISB #8008

SMITH, DRISCOLL & ASSOCIATES, PLLC

414 Shoup Avenue

P.O. Box 50731

Idaho Falls, Idaho 83405

(208) 524-0731

DISTRICT COURT
MAGISTRATE DIVISION
BONNEVILLE COUNTY, IDAHO

12 AUG 28 PM 4:20

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,
an Idaho limited liability company,

Plaintiff/Appellant,

Vs.

STEPHANIE STRAWN and JASON
STRAWN, wife and husband

Defendants/Respondents.

Case No. CV-12-1171

AMENDED NOTICE OF APPEAL

MEDICAL RECOVERY SERVICES, LLC,
an Idaho limited liability company,

Plaintiff/ Appellant,

Vs.

BRANDON LEWIS and RENEE LEWIS,
wife and husband

Defendants/ Respondents.

Case No. CV-12-2164

MEDICAL RECOVERY SERVICES, LLC,
an Idaho limited liability company,

Plaintiff / Appellant,

Vs.

JOSEPH KNIGHT

Defendant/ Respondent.

Case No. CV-12-2478

TO THE ABOVE NAMED RESPONDENTS:

NOTICE IS HEREBY GIVEN THAT:

1. The above-named appellant, MEDICAL RECOVERY SERVICES, LLC, an Idaho limited liability company, appeals against the above-named respondents, STEPHANIE STRAWN and JASON STRAWN, wife and husband, BRANDON LEWIS and RENEE LEWIS, wife and husband , and JOSEPH KNIGHT to the District Court of the Seventh Judicial District of the State of Idaho, in and for the County of Bonneville on the Motion for Reconsideration denied on May 23, 2012, on the Default Judgment in which the attorney's fees were cut on May 23, 2012, and on the Default Judgment entered on June 18, 2012 by MAGISTRATE Michelle Mallard, presiding over the MAGISTRATE Court of the SEVENTH Judicial District of the State of Idaho, in and for the County of Bonneville filed with the court May 23, 2012, May 23, 2012, and June 18, 2012 .

2. Appellant has the right to appeal to the District Court, and the memorandum decisions, orders, and judgment described in paragraph 1 above are subject to appeal pursuant to Rule 11(a), Idaho Appellate Rules.

3. The issues which the appellant intends to assert in the appeal are the following:

a. Did the MAGISTRATE court commit reversible error when it did not award attorney's fees on default in an amount agreed to by the parties pursuant to a written contract?

b. Is Medical Recovery Services, LLC entitled to an award of attorney's fees under I.C. 12-120(1), (3) and (5) and I.A.R. 41?

4. There has been no order entered sealing any portion of the record in this case.

5. The appellant requests no transcript be prepared on appeal.

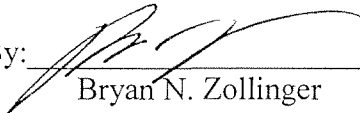
6. The appellant requests the following documents to be included in the clerk's record in addition to those automatically included under Rule 28, Idaho Appellate Rules: The entire MAGISTRATE court file.

7. I certify:

- (a) That a copy of this notice of appeal has been served on the reporter;
- (b) That the appellate filing fee has been paid;
- (c) That service has been made upon all parties required to be served pursuant to Rule 20, Idaho Appellate Rules.

DATED this 28 day of August, 2012.

SMITH, DRISCOLL & ASSOCIATES, PLLC

By: 
Bryan N. Zollinger
Attorneys for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 28th day of August, 2012, I caused a true and correct copy of the foregoing AMENDED NOTICE OF APPEAL to be served, by placing the same in a sealed envelope and depositing it in the United States Mail, postage prepaid, or hand delivery, facsimile transmission or overnight delivery, addressed to the following:

Persons Served:

- ☒ U.S. Mail
☐ Facsimile
☐ Hand Delivery
☐ Overnight Delivery

Stephanie and Jason Strawn
248 Valley Dr
Idaho Falls, ID 83401

- ☒ U.S. Mail
☐ Facsimile
☐ Hand Delivery
☐ Overnight Delivery

Brandon and Renee Lewis
1142 E 21st Street
Idaho Falls, ID 83404

- ☒ U.S. Mail
☐ Facsimile
☐ Hand Delivery
☐ Overnight Delivery

Joseph Knight
1542 Laprele St. Apt 53
Idaho Falls, ID 83402


Bryan N. Zollinger, Esq.

Bryan N. Zollinger ISB #8008
SMITH, DRISCOLL & ASSOCIATES, PLLC
P.O. Box 50731
Idaho Falls, Idaho 83405
(208) 524-0731

U.S. District Court
MAGISTRATE DIVISION
CLERK'S OFFICE
12 SEP 12 PM 4:55

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,
an Idaho limited liability company,

Plaintiff/Appellant,

Vs.

STEPHANIE STRAWN and JASON
STRAWN, wife and husband

Defendants/Respondents.

Case No. CV-12-1171

BRIEF ON APPEAL

MEDICAL RECOVERY SERVICES, LLC,
an Idaho limited liability company,

Plaintiff/ Appellant,

Vs.

BRANDON LEWIS and RENEE LEWIS,
wife and husband

Defendants/ Respondents.

Case No. CV-12-2164

MEDICAL RECOVERY SERVICES, LLC,
an Idaho limited liability company,

Plaintiff / Appellant,

Vs.

JOSEPH KNIGHT

Defendant/ Respondent.

Case No. CV-12-2478

I. INTRODUCTION.

Appellant, Medical Recovery Services, LLC, ("MRS") appeals from the Default Judgments entered on April 13, 2012; May 29, 2012; and June 18, 2012. This appeal addresses the Magistrate Court's refusal to award the amount of \$350.00 in attorney's fees which the appellees agreed to pay by contract.

II. MATERIAL FACTS.

DATE	EVENT
February 27, 2012; April 16, 2012; May 2, 2012	Appellant files Complaint;
April 10, 2012; May 23, 2012; June 12, 2012	Plaintiff files default judgment pleadings seeking \$350 as attorney's fees based on a contractual provision in which the defendant agreed to pay \$350 as attorney's fees;
April 13, 2012; May 29, 2012; June 18, 2012	The Magistrate Court strikes \$350 attorney's fee amount contained in proposed judgment and awards the principal and interest as attorney's fees in Default Judgment;
April 17, 2012	Plaintiff files a Motion for Reconsideration specifically identifying the express language of the contract in which the defendant agreed to pay \$350 as attorney's fees;
April 20, 2012	The Magistrate Court denies the Motion for Reconsideration;
May 30, 2012; July 6, 2012;	Plaintiff files Notice of Appeal; and
July 6, 2012	Plaintiff files a Motion to Consolidate;
August 14, 2012	The District Court enters Order Consolidating Cases.

III. ISSUES ON APPEAL.

- A. Did the Magistrate Court commit reversible error when it did not award attorney's fees on default in an amount agreed to by the parties pursuant to a written contract?
- B. Whether the plaintiff is entitled to costs on appeal?

IV. STANDARD OF REVIEW.

Idaho Rule of Civil Procedure 83(u)(1) provides:

Upon an appeal from the magistrate's division of the district court, not involving a trial de novo, the district court shall review the case on the record and determine the appeal as an appellate court in the same manner and upon the same standards of review as an appeal from the district court to the Supreme Court under the statutes and law of this state, and the appellate rules of the Supreme Court.

Therefore, the District Court should review this case under the same standard of review as the Supreme Court would review an appeal from a district court. The Idaho Supreme Court has held that, when reviewing the decision of a court to award attorney fees, courts apply an abuse of discretion standard. *Contreras v. Rubley*, 142 Idaho 573 (2006). However, when the awarding of attorney's fee depends on statutory interpretation, courts apply a different standard of review. The interpretation of a statute is a question of law over which a court exercises free review. *Id.* In this case, the Magistrate Court has based its decision on an improper interpretation of Idaho Code § 26-2229(A)(4). Therefore, this appeal is based upon statutory interpretation, and the District Court should exercise free review.

V. THE MAGISTRATE COURT COMMITTED REVERSIBLE ERROR BY FAILING TO AWARD THE AMOUNT OF ATTORNEY'S FEES THE PARTIES AGREED TO.

- A. Plaintiff Had A Legal Entitlement To Attorney Fees For The Amount The Parties Agreed To In A Written Contract.

It is generally accepted that a court will not permit a party to avoid its contractual obligations. *Smith v. Idaho State Federal Credit Union*, 114 Idaho 680 (1988). When a contract is clear and unambiguous, courts are required to enforce the terms as written and cannot revise

them in order to make it better for the parties. *McKay v. Boise Project Bd. of Control*, 141 Idaho 463 (2005). In Idaho, an attorney's fee agreement constitutes a valid contract. *Curr v. Curr*, 124 Idaho 686 (1993). Additionally, Idaho courts have held that when there is a valid contract between the parties which contains a provision for attorney's fees and costs, the terms of that provision establish a right to attorney's fees and costs. *LeaseFirst v. Burns*, 131 Idaho 158 (1998).

Further, at least one Idaho court, as well as courts of other jurisdictions, has held that where parties to a contract fix the amount of the attorney fees to be paid, it is presumed that the agreed amount is reasonable. *See Wooten v. Dahlquist*, 42 Idaho 121 (1926) (holding that trial court did not err in presuming that the \$200 fixed amount of contractual attorney's fees was reasonable in the absence of evidence to the contrary); *Government Street Lumber Company, Inc. v. AmSouth Bank, N.A.*, 553 So.2d 68 (Ala. 1989) (holding that trial court did not err in awarding amount of attorney's fees the parties expressly agreed to in a written agreement); and *McDowell mountain Ranch Community Ass'n, Inc. v. Simmons*, 165 P3d 667 (Ariz. App. 2007) (holding that an agreement to pay a specified amount in attorney's fees establishes a prima facie entitlement to fees in the amount requested.)

Here, the attorney's fee provisions are found in written contracts and provide that the defendants agree "to pay as a reasonable attorney's fee \$350 or 35% of the principal and interest on my account balance, whichever is greater, if my account is assigned to a collection agency and suit is filed to recover payment on my account."¹ The language of the attorney's fee provisions are clear and unambiguous. The parties entered into agreements in which they formed valid contracts for attorney's fees. These contracts created a right to the amount of

¹ See Contract attached as Exhibit "A" to the Affidavit in Support of Application for Default Judgment dated April 9, 2012.
F:\CLIENTS\BDS\Collections\MRS\Files\7341.07361\Pleadings\120912 Brief on Appeal.docx

attorney's fees agreed upon in the contracts when the accounts were assigned for collections and suits were filed to recover payment, and the amount is presumed by law to be reasonable. Additionally, provisions virtually identical to the provision at issue in this case and the right to contractual attorney's fees have recently been addressed and the provisions have been upheld in two recent decisions of the District Court of The Seventh Judicial District of The State of Idaho, In and For Bonneville County.² The Magistrate Court, in the cases being appealed from, acknowledges that "this same issue has been addressed in two previous decisions in Bonneville County,"³ but apparently disagrees with the District Court's findings.

B. Idaho Code Section 26-2229(A)(4) Does Not Apply To The Facts Of This Case.

Although MRS is subject to the Idaho Collection Agency Act ("ICAA"), Idaho Code §§ 26-2201 et. al., I.C. § 26-2229A is not applicable in this case because MRS, as assignee, is trying to enforce contracts between the debtors and medical service providers and not a contract between MRS and the debtors. I.C. § 26-2222 defines a licensee as "a person who has obtained a license under this act." MRS is a licensee under the act, but the underlying medical provider and party to the contracts, Community Care, is clearly not a licensee or person required to be licensed under this act. I.C. § 26-2229A states in relevant part that:

(1) Every *licensee or person required to be licensed under this act* and its agents shall deal openly, fairly, and honestly without deception in the conduct of its business activities in this state under this act.

(2) When not inconsistent with the statutes of this state, the provisions of the federal fair debt collection practices act, 15 U.S.C. section 1692, et seq., as amended, may be enforced by the director against collection agencies licensed or required to be licensed under the provisions of this act.

(4) *No collection agency licensee, or collection agency required to be licensed under this act*, or agent of such collection agency shall collect or attempt to collect any interest or other charges, fees, or expenses incidental to the principal obligation unless such

² See Opinion , Decision, and Order on Plaintiff's Appeal in MRS v. Graciela Bautista, CV-2007-7026 and Decision on Appeal in MRS v. Manual Chavez, CV-2011-4973.

³ See Order Denying Second Motion for Reconsideration in MRS v. Joni E. Jackson and Dennis Chad Jackson, CV-2011-0006553 dated May 18, 2012 at page 6.

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interest or incidental fees, charges, or expenses:

- (a) Are expressly authorized by statute;
- (b) Are allowed by court ruling against the debtor;
- (c) Have been judicially determined;
- (d) Are provided for in a written form agreement, signed by both the debtor and the licensee, and which has the prior approval of the director with respect to the terms of the agreement and amounts of the fees, interest, charges and expenses; or

I.C. § 26-2229A (Emphasis Added).

In the cases now on appeal, Community Care, the medical service provider who contracted with the debtors is not a licensee as defined by the ICAA and the ICAA does not apply to the contract between Community Care and its patients. The ICAA does not apply to anyone but “licensees” under the act and does not create any legal requirements as to the content of contracts between medical providers and their patients. The attorney’s fee provisions are found in the contracts between Community Care and the appellees and are part of the principal debt assigned to MRS. The magistrate court dismissed MRS’ argument that I.C. §26-2229A did not apply stating that “the statute broadly states that agencies shall not *collect* any fees incidental to the principal except as provided by in the statute” and argued that because MRS listed the attorney’s fees separately in its complaint the attorney’s fees clause “is not treated as part of the principal by MRS, and would be improper to denominate as principal.”⁴ Following this brief analysis, the magistrate court concludes that “[t]hus, MRS is attempting to collect a fee incidental to the principal.”⁵

The magistrate court does not explain how I.C. § 26-2229A(4) applies to Community Care who is not a licensee but instead apparently interprets that statute to mean that a collection agency cannot “collect” these fees for its client. However, other Idaho statutes and rules of

⁴ See Order Denying Second Motion for Reconsideration in MRS v. Joni E. Jackson and Dennis Chad Jackson, CV-2011-0006553 dated May 18, 2012 at page 5.

⁵ See Order Denying Second Motion for Reconsideration in MRS v. Joni E. Jackson and Dennis Chad Jackson, CV-2011-0006553 dated May 18, 2012 at page 5.

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procedure clearly conflict with this interpretation and allow collection agencies to collect attorney's fees. It is the generally accepted in the state of Idaho and the practice of all magistrate courts, district courts, and the Supreme Court in the state of Idaho to award attorney's fees to collection agencies under I.C. §§ 12-120(1), (3) & (5). Thus according to the reasoning of the magistrate court in this case, all of these other courts, including this magistrate court who did award some attorney's fees, are improperly awarding attorney's fees in violation of this code section. Clearly, the intention and plain language of I.C. § 26-2229A(4) is to allow collection agencies and other licensees under the act to collect attorney's fees that are "expressly authorized by statute." Attorney's fees in the cases on appeal are awardable under I.C. §§ 12-120(1) and (3) and the amount is set pursuant to valid contracts between the Community Care and the debtors. Therefore, all the magistrate is really doing is holding that the parties to a contract cannot set the amount of attorney's fees and improperly citing I.C. § 26-2229A(4) in support of this outcome.

The magistrate court fails to cite to or otherwise explain the authority under which it completely invalidates and rewrites Community Care's contract and seems to override the legal presumption that the contractual amount is reasonable. Additionally, as noted above, this exact contractual provision has been judicially determined to be a valid provision for attorney's fees. Because MRS, who is the licensee in this case, is not seeking any charges incidental to the principal but is only seeking to enforce the amount of the contractual debt, this court should enforce Community Care's contract which it assigned to MRS and award MRS the contractual fees sought.

C. Court's Have Consistently Upheld And Enforced Similar Contractual Attorney's Fee Provisions Under the Fair Debt Collection Practices Act.

MRS has been unable to locate even a single Idaho case which applies I.C. § 26-2229A(4) and will therefore rely on case law interpreting the Fair Debt Collection Practices Act

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("FDCPA") which is expressly adopted and incorporated as part of the ICAA to show that similar contracts for attorney's fees are routinely upheld. In this regard, courts have held that contracts between the underlying creditor and debtor are enforceable by the collection agency to which the debt is assigned. *See Shapiro v. Riddle & Associates, P.C.*, 351 F.3d 63, 64 (2d Cir. 2003)(Affirming district court's decision that it was not a violation of FDCPA to collect a contractual attorney fee on a contract between the underlying debtor and creditor.). One court explained that "once a debtor such as Bull agrees to pay attorneys' fees in the event of default, he cannot use the FDCPA to contest the reasonableness of those fees, which is precisely what Plaintiff seeks to do in this case. Stated differently, even if a court were to agree with Plaintiff that \$3,900 is an unreasonable amount of attorneys' fees, Defendants demanding that amount in their collection complaint does not give rise to a claim under the FDCPA." *Bull v. Asset Acceptance, LLC*, 444 F. Supp. 2d 946, 951 (N.D. Ind. 2006).

In this case, the defendant has not even objected to the contractual amount of fees but instead the court has on its own initiative raised the objection for the debtor. The court distinguishes these federal cases stating that "the federal fair debt collection statute is inconsistent with the Idaho statute on this particular issue and thus any cases cited would be inapposite." The court argues that the FDCPA is "less restrictive" than the ICCA on this issue but the plain language of both statutes shows that the FDCPA is in fact more restrictive and that the contracts between Community Care and the debtors complies with the FDCPA. The only exception under the FDCPA is that the amount must be "expressly authorized by the agreement creating the debt or permitted by law." 15 U.S.C.A. §1692f (West). The ICAA permits that the exceptions that the fees are authorized by statute, allowed by court ruling, have been judicially determined or are provided by a written agreement signed by the licensee and the debtor and

approved by the director.⁶ In this case, the attorney fee sought is allowable per statute as explained above, by court ruling because the courts of Idaho routinely uphold contracts for attorney's fees, and similar provisions for attorney's fees have been judicially determined in this District Court on appeal. Because contractual attorney's fee provisions have routinely been upheld in other FDCPA cases, this court should award MRS the contractual attorney's fees it seeks in this case as MRS is not in violation of the FDCPA or the ICAA.

D. The Magistrate Court Improperly Interprets I.C. § 26-2229A(4) And This Improper Interpretation and Application Renders I.C. § 26-2229A(4) Unconstitutional.

Both article 1 § 2 of the Idaho Constitution and the fourteenth amendment to United States Constitution provide all people with equal protection and benefit of the law. Idaho courts have explained that “[t]he principle underlying the equal protection clauses of both the Idaho and United States Constitutions is that all persons in like circumstances should receive the same benefits and burdens of the law.” *Bon Appetit Gourmet Foods, Inc. v. State, Dept. of Employment*, 117 Idaho 1002, 1003-04, (1989); *See also, Sterling H. Nelson & Sons, Inc. v. Bender*, 95 Idaho 813, 520 P.2d 860 (1974); and *State v. Breed*, 111 Idaho 497, 725 P.2d 202 (Ct.App.1986). In determining the standard of review to apply to equal protection analysis, the Idaho Court of Appeals has explained:

“In any equal protection analysis, the Court must: (1) identify the classification at issue; (2) determine the standard of review to apply; and (3) apply the standard. Strict scrutiny applies where the classification is based upon a suspect class (such as race) or involves a fundamental right. Idaho Courts use the “means focus” test where the classification is discriminatory on its face and clearly bears no relationship to the statute's declared purpose. Finally, the rational basis test applies in all other situations. In order to survive rational basis review, the statutory classification must “bear a rational relationship to [a] legitimate government interest.”

⁶ See I.C. § 26-2229A(4).

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Aeschliman v. State, 132 Idaho 397, 401, 973 P.2d 749, 753 (Ct. App. 1999)(Internal citations omitted).

In this case, the magistrate court's interpretation of I.C. § 26-2229A(4) does not involve a suspect class and this court should review the magistrate's decision using a rational basis review. MRS does not argue that this statute is unconstitutional on its face but only that the magistrate court has applied the statute in violation of the equal protection clause. Essentially, if the magistrate court's ruling is upheld, the outcome would be that the laws would apply differently to "licensees" under the ICAA. For example, under the magistrate court's analysis, Community Care would be able to directly hire a law firm to collect on its contractual debt and the law firm could collect the contractual attorney's fees. However, if Community Care decides to hire a collection agency to collect the debt and the agency finds it necessary to file suit, the collection agency could not collect the contractual attorney's fees. The effect of this unequal protection or burden of the law is that fewer creditors would use a collection agency to collect debts because in order to recover attorney's fees the creditors would have to hire an attorney and file law suits against their patients, customers or clients directly. This could not have been the intention of the legislature and is not what I.C. § 26-2229A(4) actually states on its face. Although the ICAA does not have a purpose section, the FDCPA states that "[i]t is the purpose of this subchapter to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses." 15 U.S.C.A. § 1692. The magistrate court's interpretation of I.C. § 26-2229A does not rationally relate to this stated purpose but would only create different burdens on collection agencies compared to attorney's or other similarly situated debt collectors. Therefore, because there is no

rational basis reasonably related to a legitimate government objective, the magistrate court's interpretation of I.C. § 26-2229A would render it unconstitutional as applied.

VI. PLAINTIFF IS ENTITLED TO RECOVER ITS COSTS ON APPEAL.

Rule 40 of the Idaho Appellate Rules permits the award of costs to the prevailing party on appeal. Rule 40 states, "Costs shall be allowed as a matter of course to the prevailing party unless otherwise provided by law or order of the Court." As the prevailing party on appeal, plaintiff is entitled to recover its costs pursuant to Rule 40.

VII. CONCLUSION.

For all the reasons set forth in this brief, plaintiff respectfully requests that the court reverse and remand the orders and judgments of the Magistrate Court and further order that the Magistrate Court award \$350 as attorney's fees and award plaintiff its costs on appeal.

RESPECTFULLY SUBMITTED this 12th day of September, 2012.

SMITH, DRISCOLL & ASSOCIATES, PLLC

By: 

Bryan N. Zollinger
Attorneys for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of September, 2012, I caused a true and correct copy of the forgoing **BRIEF ON APPEAL** to be served, by placing the same in a sealed envelope and depositing it in the U.S. Mail, postage prepaid, or hand delivery, facsimile transmission or overnight delivery, addressed to the following:

PARTIES SERVED:

- ☒ U.S. Mail
- ☐ Facsimile
- ☐ Hand Delivery
- ☐ Overnight Delivery

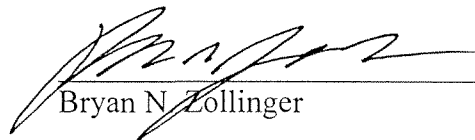
Stephanie and Jason Strawn
248 Valley Dr
Idaho Falls, ID 83401

- ☒ U.S. Mail
- ☐ Facsimile
- ☐ Hand Delivery
- ☐ Overnight Delivery

Brandon and Renee Lewis
1142 E 21st Street
Idaho Falls, ID 83404

- ☒ U.S. Mail
- ☐ Facsimile
- ☐ Hand Delivery
- ☐ Overnight Delivery

Joseph Knight
1542 Laprele St. Apt 53
Idaho Falls, ID 83402


Bryan N. Zollinger

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

MEDICAL RECOVERY SYSTEMS, LLC,)
an Idaho limited liability company,)
Plaintiff/Appellant,)

vs.)

STEPHANIE STRAWN and JASON)
STRAWN, wife and husband,)
Defendants/Respondents.)

MEDICAL RECOVERY SYSTEMS, LLC,)
an Idaho limited liability company,)
Plaintiff/Appellant,)

vs.)

BRANDON LEWIS and RENEE LEWIS,)
husband and wife,)
Defendants/Respondents.)

MEDICAL RECOVERY SYSTEMS, LLC,)
an Idaho limited liability company,)
Plaintiff/Appellant,)

vs.)

JOSEPH KNIGHT,)
Defendant/Respondent.)

Case No. CV-2012-1171
Case No. CV-2012-2164
Case No. CV-2012-2478

**MEMORANDUM DECISION AND
ORDER RE: APPEAL**

I. FACTUAL AND PROCEDURAL BACKGROUND

Appellant, Medical Recovery Systems, LLC (hereinafter "MRS"), is a collection agency licensed under the Idaho Collection Agency Act.

Community Care is a provider of urgent care and family practice medicine.

Stephanie and Jason Strawn are a married couple, one of whom used Community Care's services and entered into a contract with Community Care.

Brandon and Renee Lewis are a married couple, one of whom used Community Care's services and entered into a contract with Community Care.

Joseph Knight also used Community Care's services and entered into a contract with Community Care.

Each Community Care contract contained the following provision:

I agree to pay my account in full at the time of services unless before services are performed Community Care agrees to other payment arrangement. I understand that Community Care will submit insurance benefits for payment only as a courtesy for me. I agree to pay 18% interest on the outstanding balance on my account with interest to commence 60 days after services even if payment from my insurance company is pending. I also agree to pay an additional service charge of 50 cents per month on my account. If Community Care assigns my account to a collection agency for collections all reasonable cost and attorney's fees incurred to collect on my account. [sic] I agree that a \$20.00 collection fee shall be added to my account as a reasonable cost if Community Care assigns my account to a collection agency. I agree to pay as a reasonable attorney's fee \$350 or 35% of the principal and interest on my account balance, whichever is greater, if my account is assigned to a collection agency and suit is filed to recover payment on my account.

At some point in time, Community Care assigned its interest in the contracts to MRS.

MRS filed Complaints against: (1) Stephanie and Jason Strawn on February 27, 2012; (2) Brandon and Renee Lewis on April 16, 2012; and (3) Joseph Knight on May 2, 2012. MRS's complaints sought recovery of fees, including attorney fees, arising under the contracts.

Default Judgment was entered against each defendant on the following dates: (1) against the Strawns on April 13, 2012; (2) against the Lewises on May 29, 2012; and (3) against Knight on June 18, 2012.

In each of these cases, the Magistrate Court granted attorney fees in an amount less than the \$350 MRS was requesting under the contracts.

In the case against the Strawns, the court awarded \$268.40 in attorney fees.

In the case against the Lewises, the court awarded \$192.98 in attorney fees.

In the case against Knight, the court awarded awarded \$300.00.

MRS filed a Motion for Reconsideration in its case against the Strawns on April 17, 2012.

On May 23, 2012, the magistrate denied the proposed amended judgment included with the motion for reconsideration.

MRS filed Notices of Appeal on May 30, 2012 in the Strawn and Lewis cases and on July 6, 2012 in the Knight case.

Oral argument was heard on the appeals on November 1, 2012.

II. STANDARD OF ADJUDICATION

Rule 83(u)(1) of the Idaho Rules of Civil Procedure provides:

Appellate Review. The scope of appellate review on an appeal to the district court shall be as follows:

- (1) Upon an appeal from the magistrate's division of the district court, not involving a trial de novo, the district court shall review the case on the record and determine the appeal as an appellate court in the same manner and upon the same standards of review as an appeal from the district court to the Supreme Court under the statutes and law of this state, and the appellate rules of the Supreme Court.

“The interpretation of a statute is a question of law over which this Court exercises free review.” *New Phase Investments, LLC v. Jarvis*, 153 Idaho 207, 209, 280 P.3d 710, 712 (2012) (citing *Gonzalez v. Thacker*, 148 Idaho 879, 881, 231 P.3d 524, 526 (2009)).

The amount of attorney fees and costs awarded is generally discretionary. *Lettunich v. Lettunich*, 141 Idaho 425, 435, 111 P.3d 110, 120 (2005).

III. DISCUSSION

MRS asks this Court to reverse the magistrate court and award it attorney fees. MRS argues that it is entitled to recover attorney fees under several bases: (1) the attorney fee provision of the underlying contract between the debtors and creditor should be enforced; (2) Idaho Code Section 26-2229A(4) does not apply to the facts of this case; (3) the contract’s attorney fees provision complies with the Fair Debt Collection Practices Act; and (4) I.C. § 26-2229A, as interpreted by the magistrate court, is unconstitutional.

A. Contract Law

MRS argues that a valid contract exists between Community Care and the debtors/patients. MRS further contends that the attorney fees provision contained within that contract is presumed to be reasonable under Idaho law.

The Idaho Supreme Court has explained:

Attorney fees are awardable only where they are authorized by statute or contract.... If the party bases its claim for attorney fees upon a contract, then the party must likewise identify that portion of the contract upon which the party relies as authority for the awarding of attorney fees. The party must then provide a reasoned argument, supported by case law as necessary, explaining why that ... contractual provision entitles the party to an award of attorney fees in this instance.

Wattenbarger v. A.G. Edwards & Sons, Inc., 150 Idaho 308, 324, 246 P.3d 961, 977 (2010) (citing *Bream v. Benscoter*, 139 Idaho 364, 369, 79 P.3d 723, 728 (2003)).

Rule 54(e)(1) provides:

In any civil action the court may award reasonable attorney fees, which at the discretion of the court may include paralegal fees, to the prevailing party or parties as defined in Rule 54(d)(1)(B), when provided for by any statute or contract. Provided, attorney fees under section 12-121, Idaho Code, may be awarded by the court only when it finds, from the facts presented to it, that the case was brought, pursued or defended frivolously, unreasonably or without foundation; but attorney fees shall not be awarded pursuant to section 12-121, Idaho Code, on a default judgment.

I.R.C.P. 54(e)(1).

In Idaho an award of attorney fees is proper where fees have been contractually provided. Barring any other kind of specific statutory preclusion, the magistrate court had authority to award fees.

B. I.C. § 26-2229A(4)

MRS concedes that as a collection agency and licensee it is subject to the Idaho Collection Agency Act (“ICAA”), found under I.C. §§ 26-2201, *et seq.* It argues, however, that section 26-2229A(4) is not applicable because MRS is attempting, as an assignee, to enforce contracts between the debtors and Community Care and not a direct contract between MRS and the debtors. The essence of MRS’s argument is that because Community Care is not a licensee under the Idaho Collection Agency Act, MRS may collect Community Care’s attorney fees on its behalf despite I.C. § 26-2229A(4). MRS states: “The ICAA does not apply to anyone but “licensees” under the act and does not create any legal requirements as to the content of contracts between medical providers and their patients.” Brief on Appeal at 6. MRS further argues that I.C. § 12-120(1) and (3) permits it to collect attorney fees.

I.C. § 26-2229A(4) provides:

No collection agency licensee, or collection agency required to be licensed under this act, or agent of such collection agency shall collect or attempt to

collect any interest or other charges, fees, or expenses incidental to the principal obligation unless such interest or incidental fees, charges, or expenses:

- (a) *Are expressly authorized by statute;*
- (b) Are allowed by court ruling against the debtor;
- (c) Have been judicially determined;
- (d) *Are provided for in a written form agreement, signed by both the debtor and the licensee, and which has the prior approval of the director with respect to the terms of the agreement and amounts of the fees, interest, charges and expenses; or*
- (e) Reasonably relate to the actual cost associated with processing a demand draft or other form of electronic payment on behalf of a debtor for a debt payment, provided that the debtor has preauthorized the method of payment and has been notified in advance that such payment may be made by reasonable alternative means that will not result in additional charges, fees or expenses to the debtor.

(Emphasis added).

The standard this Court applies when interpreting statutes is well established:

Interpretation of a statute begins with an examination of the statute's literal words. Where the language of a statute is plain and unambiguous, courts give effect to the statute as written, without engaging in statutory construction. Only where the language is ambiguous will this Court look to rules of construction for guidance and consider the reasonableness of proposed interpretations.

Curlee, 148 Idaho at 398, 224 P.3d at 465 (citing *Idaho Conservation League, Inc. v. Idaho State Dep't of Agric.*, 143 Idaho 366, 368, 146 P.3d 632, 634 (2006) (internal citations omitted)). A statute "is ambiguous where reasonable minds might differ or be uncertain as to its meaning." *Payette River Prop. Owners Ass'n v. Bd. of Comm'rs of Valley Cnty.*, 132 Idaho 551, 557, 976 P.2d 477, 483 (1999) (citing *Ada Cnty. v. Gibson*, 126 Idaho 854, 856, 893 P.2d 801, 803 (Ct.App.1995)). "However, ambiguity is not established merely because the parties present differing interpretations to the court." *Id.*

Stonebrook Const., LLC v. Chase Home Finance, LLC, 152 Idaho 927, 931, 277 P.3d 374, 378 (2012).

MRS is correct that Community Care is not subject to the provisions of the ICAA. MRS, however, is subject to those provisions. I.C. § 26-2229A(4) plainly prohibits MRS from collecting any fees, which are incidental to the principal obligation, unless it fits one of five enumerated exceptions. MRS only asks this Court to consider the exceptions in subsections (4)(a) and (4)(d).

Subsection (4)(a) states that fees are allowed if expressly authorized by statute. MRS refers to I.C. § 12-120(1) and (3), which provide:

(1) Except as provided in subsections (3) and (4) of this section, in any action where the amount pleaded is thirty-five thousand dollars (\$35,000) or less, there shall be taxed and allowed to the prevailing party, as part of the costs of the action, a reasonable amount to be fixed by the court as attorney's fees. For the plaintiff to be awarded attorney's fees, for the prosecution of the action, written demand for the payment of such claim must have been made on the defendant not less than ten (10) days before the commencement of the action; provided, that no attorney's fees shall be allowed to the plaintiff if the court finds that the defendant tendered to the plaintiff, prior to the commencement of the action, an amount at least equal to ninety-five percent (95%) of the amount awarded to the plaintiff.

...

(3) In any civil action to recover on an open account, account stated, note, bill, negotiable instrument, guaranty, or contract relating to the purchase or sale of goods, wares, merchandise, or services and in any commercial transaction unless otherwise provided by law, the prevailing party shall be allowed a reasonable attorney's fee to be set by the court, to be taxed and collected as costs.

The term "commercial transaction" is defined to mean all transactions except transactions for personal or household purposes. The term "party" is defined to mean any person, partnership, corporation, association, private organization, the state of Idaho or political subdivision thereof.

These sections of the Idaho Code do not expressly authorize the collection of attorney fees by a licensed collection agency as required by I.C. § 26-2229A(4)(a).

Neither has MRS and the debtors agreed in writing, pursuant to I.C. § 26-2229A(4)(d), as to the amount of fees that could be charged. Despite MRS's argument that the agreement between Community Care and the debtors satisfies the requirement of I.C. § 26-2229A(4)(d), the plain language of the statute does not support this conclusion.

C. Fair Debt Collection Practices Act

MRS argues the ICAA expressly adopts and incorporates the federal Fair Debt Collection Practices Act (FDCPA), which permits the collection of attorney fees by collection agencies. MRS cites *Shapiro v. Riddle & Associates, P.C.*, 351 F.3d 63, 64 (2d Cir. 2003), in support of its argument. MRS further argues that the FDCPA is more restrictive than the ICAA on attorney fee provisions and the contracts between Community Care and the debtors comply with the FDCPA.

I.C. § 26-2229A(2) provides:

When not inconsistent with the statutes of this state, the provisions of the federal fair debt collection practices act, 15 U.S.C. section 1692, et seq., as amended, may be enforced by the director against collection agencies licensed or required to be licensed under the provisions of this act.

(Emphasis added).

The FDCPA provides:

A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

The collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law.

15 U.S.C. § 1692f.

The ICAA is more restrictive against collection agencies and more protective of debtors than the FDCPA. The above-cited section of the FDCPA is inconsistent with I.C. § 26-2229A(2) and, therefore, inapplicable to this case.

D. Constitutionality of I.C. § 26-2229A

MRS argues that as the magistrate court has interpreted I.C. § 26-2229A, fewer creditors would retain the services of a collection agency and would instead retain an attorney so as to enable them to collect attorney fees. MRS contends this could not have been the intention of the legislature when the ICAA was enacted. MRS notes that the ICAA does not specify a purpose, but refers to the stated purpose of the FDCPA, which states, “It is the purpose of this subchapter to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses.” 15 U.S.C.A. § 1692. MRS argues § 26-2229A, as it has been interpreted by the magistrate court, does not rationally relate to that purpose and is, therefore, unconstitutional.

The Idaho Supreme Court has explained:

The state has wide discretion to enact laws that affect some groups or citizens differently from others. *Id.* “It is generally presumed that legislative acts are constitutional, that the state legislature has acted within its constitutional powers, and any doubt concerning interpretation of a statute is to be resolved in favor of that which will render the statute constitutional.” *Olsen v. J.A. Freeman Co.*, 117 Idaho 706, 709, 791 P.2d 1285, 1288 (1990). “Under either the Fourteenth Amendment or the Idaho Constitution, a classification will survive rational basis analysis if the classification is rationally related to a legitimate governmental purpose.” *Meisner v. Potlatch Corp.*, 131 Idaho 258, 262, 954 P.2d 676, 680 (1998). “On rational basis review, courts do not judge the wisdom or fairness of the legislation being challenged.” *Coghlan v. Beta Theta Pi Fraternity*, 133 Idaho 388, 396, 987 P.2d 300, 308 (1999). “Under the ‘rational basis test,’ a classification will withstand an equal protection challenge if there

is any conceivable state of facts which will support it.” Birt v. Creative Forest Prods., 108 Idaho 116, 120, 697 P.2d 818, 822 (1985).

McLean v. Maverik Country Stores, Inc., 142 Idaho 810, 814, 135 P.3d 756, 760 (2006)

(emphasis added).

CJS *Constitutional Law* § 1120 provides:

A classification which does not involve suspect criteria or fundamental rights is examined under the relatively relaxed rational basis standard which requires only that the classification reasonably further a legitimate governmental purpose, objective, or interest, or rationally be related to such a purpose, objective, or interest. Such classification must be reasonable and not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced are treated alike. *To satisfy the equal protection clause, the legitimate state purpose need not have been the main objective of the statute, or be readily ascertainable upon the face of the statute.*

A classification is valid and will be upheld, under this test, if it is rationally related to a legitimate governmental interest or purpose. Conversely, under the rational relation test or reasonable basis test, *a challenged classification scheme may be invalidated only if it is arbitrary or bears no rational relationship to a legitimate state purpose, or if the classification rests on grounds wholly irrelevant to the achievement of the state's objective, and if no set of facts can reasonably be conceived to justify it.* Thus, the plaintiff, or the party challenging a statute or regulation, must negate any reasonably conceivable justification for the classification in order to prove that the classification is wholly irrational. However, if no reasonably conceivable set of facts could establish a rational relationship between the act and a legitimate end of government, an act involving economic or social matters will be struck down.

...

The equal protection clause is not violated merely because a classification is imperfect, or is not ideal. A classification will not be set aside if any set of facts rationally justifying it *is demonstrated to, or perceived by, the courts.* ...

(Emphasis added) (Notes omitted).

This Court initially presumes I.C. § 26-2229A is constitutional. I.C. § 26-2229A(4) prevents collection agencies from collecting fees incidental to the principal

obligation owed on a debt unless one of five exceptions is met. Creditors who are not licensed collection agencies are not subject to the same provision. The legislature may have perceived that consumers were more at risk for abuse stemming from the collection of incidental fees by collection agencies than other creditors. The ICAA still offers collection agencies the opportunity to collect reasonable attorney fees in pursuit of debt so long as one of the five exceptions listing in § 26-2229A(4) is satisfied. I.C. § 26-2229A, in effect, restricts abusive debt collection practices and is rationally related to the purpose of protecting consumers.

MRS has failed to overcome the presumption that I.C. §26-2229A is constitutional.

E. Costs on Appeal

MRS requests costs on appeal.


Because MRS is not the prevailing party on appeal, it is not entitled to costs.

IV. CONCLUSION AND ORDER

The magistrate court's default judgment is affirmed.

IT IS SO ORDERED.

DATED this 8 day of Nov 2012.


DANE H. WATKINS JR.
District Judge

CERTIFICATE OF SERVICE

I hereby certify that on this 8 day of Nov 2012, I did send a

true and correct copy of the foregoing document upon the parties listed below by mailing, with the correct postage thereon; by causing the same to be placed in the respective courthouse mailbox; or by causing the same to be hand-delivered.

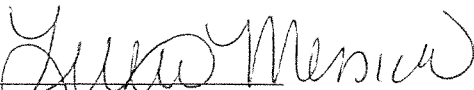
Bryan N. Zollinger
SMITH, DRISCOLL, & ASSOCIATES, PLLC
P.O. Box 50731
Idaho Falls, ID 83405

Stephanie and Jason Strawn
248 Valley Dr.
Idaho Falls, ID 83401

Brandon and Renee Lewis
1142 E 21st St.
Idaho Falls, ID 83404

Joseph Knight
1542 Laprele St. Apt. 53
Idaho Falls, ID 83402

RONALD LONGMORE
Clerk of the District Court
Bonneville County, Idaho

By 
Deputy Clerk

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

FILED
7TH JUDICIAL DISTRICT
BONNEVILLE COUNTY ID
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MEDICAL RECOVERY SYSTEMS, LLC,)
an Idaho limited liability company,)
Plaintiff/Appellant,)

Case No. CV-2012-1171
Case No. CV-2012-2164
Case No. CV-2012-2478

vs.)

**MEMORANDUM DECISION AND
ORDER RE: MOTION FOR
RECONSIDERATION**

STEPHANIE STRAWN and JASON)
STRAWN, wife and husband,)
Defendants/Respondents.)

MEDICAL RECOVERY SYSTEMS, LLC,)
an Idaho limited liability company,)
Plaintiff/Appellant,)

vs.)

BRANDON LEWIS and RENEE LEWIS,)
husband and wife,)
Defendants/Respondents.)

MEDICAL RECOVERY SYSTEMS, LLC,)
an Idaho limited liability company,)
Plaintiff/Appellant,)

vs.)

JOSEPH KNIGHT,)
Defendant/Respondent.)

I. FACTUAL AND PROCEDURAL BACKGROUND

Appellant, Medical Recovery Systems, LLC (hereinafter “MRS”), is a collection agency licensed under the Idaho Collection Agency Act.

Community Care is a provider of urgent care and family practice medicine.

Stephanie and Jason Strawn are a married couple, one of whom used Community Care's services and entered into a contract with Community Care.

Brandon and Renee Lewis are a married couple, one of whom used Community Care's services and entered into a contract with Community Care.

Joseph Knight also used Community Care's services and entered into a contract with Community Care.

Each Community Care contract contained the following provision:

I agree to pay my account in full at the time of services unless before services are performed Community Care agrees to other payment arrangement. I understand that Community Care will submit insurance benefits for payment only as a courtesy for me. I agree to pay 18% interest on the outstanding balance on my account with interest to commence 60 days after services even if payment from my insurance company is pending. I also agree to pay an additional service charge of 50 cents per month on my account. If Community Care assigns my account to a collection agency for collections all reasonable cost and attorney's fees incurred to collect on my account. [sic] I agree that a \$20.00 collection fee shall be added to my account as a reasonable cost if Community Care assigns my account to a collection agency. I agree to pay as a reasonable attorney's fee \$350 or 35% of the principal and interest on my account balance, whichever is greater, if my account is assigned to a collection agency and suit is filed to recover payment on my account.

At some point in time, Community Care assigned its interest in the contracts to MRS.

MRS filed Complaints against: (1) Stephanie and Jason Strawn on February 27, 2012; (2) Brandon and Renee Lewis on April 16, 2012; and (3) Joseph Knight on May 2, 2012. MRS's complaints sought recovery of fees, including attorney fees, arising under the contracts.

Default Judgment was entered against each defendant on the following dates: (1) against the Strawns on April 13, 2012; (2) against the Lewises on May 29, 2012; and (3) against Knight on June 18, 2012.

In each of these cases, the Magistrate Court granted attorney fees in an amount less than the \$350 MRS was requesting under the contracts.

In the case against the Strawns, the court awarded \$268.40 in attorney fees.

In the case against the Lewises, the court awarded \$192.98 in attorney fees.

In the case against Knight, the court awarded awarded \$300.00.

MRS filed a Motion for Reconsideration in its case against the Strawns on April 17, 2012.

On May 23, 2012, the magistrate denied the proposed amended judgment included with the motion for reconsideration.

MRS filed Notices of Appeal on May 30, 2012 in the Strawn and Lewis cases and on July 6, 2012 in the Knight case.

Oral argument was heard on the appeals on November 1, 2012.

On November 8, 2012, this Court entered a Memorandum Decision and Order Re: Appeal, affirming the magistrate court's default judgments.

MRS filed a Motion for Reconsideration on November 21, 2012.

Hearing was held on MRS's Motion for Reconsideration on December 20, 2012.

II. STANDARD OF ADJUDICATION

The decision to grant or deny relief pursuant to a motion for reconsideration is within the sound discretion of the trial court and, absent a manifest abuse of discretion, will not ordinarily be disturbed on appeal. *Kirkland v. State*, 143 Idaho 544, 547, 149

P.3d 819, 822 (2006); *Win of Michigan, Inc. v. Yrekd United, Inc.*, 137 Idaho 747, 754, 53 P.3d 330, 337 (2002); *see also Herman v. Coeur D'Alene Hardware & Foundry Co.*, 69 Idaho 423, 428, 208 P.2d 167, 170 (1949) (holding Industrial Accident Board did not abuse discretion in denying a rehearing).

Rule 83(u)(1) of the Idaho Rules of Civil Procedure provides:

Appellate Review. The scope of appellate review on an appeal to the district court shall be as follows:

(1) Upon an appeal from the magistrate's division of the district court, not involving a trial de novo, the district court shall review the case on the record and determine the appeal as an appellate court in the same manner and upon the same standards of review as an appeal from the district court to the Supreme Court under the statutes and law of this state, and the appellate rules of the Supreme Court.

“The interpretation of a statute is a question of law over which this Court exercises free review.” *New Phase Investments, LLC v. Jarvis*, 153 Idaho 207, 209, 280 P.3d 710, 712 (2012) (*citing Gonzalez v. Thacker*, 148 Idaho 879, 881, 231 P.3d 524, 526 (2009)).

III. DISCUSSION

MRS concedes that this Court correctly determined I.C. § 26-2229A(4) prohibits it from collecting fees, which are “incidental to the principal obligation.” *See* Br. in Supp. of M. for Reconsideration at 4. MRS argues, however, that this Court failed to decide the issue of whether the attorney fees it seeks to collect are “incidental to the principal obligation” owed under the contracts between Defendants and Community Care. MRS argues that Idaho law treats contractual attorney fee provisions as “‘an integral part’ of a party’s entitlement under the provisions of the contract itself.” Br. in Supp. of M. for Reconsideration at 2. MRS reasons that because of this, “this Court

cannot treat the attorney's fees MRS seeks differently than the obligation to pay the contractual debt because the contracts the debtors signed contain contractual provisions that establish a right to an award of attorney's fees." *Id.* MRS cites *Bank of Idaho v. Colley*, 103 Idaho 320, 326 (Ct. App. 1982), in support of its argument.

MRS is correct that this Court failed to directly address the question whether the fees were incidental to the principal obligation.

I.C. § 26-2229A(4) provides:

No collection agency licensee, or collection agency required to be licensed under this act, or agent of such collection agency shall collect or attempt to collect any interest or other charges, fees, or expenses *incidental to the principal obligation* unless such interest or incidental fees, charges, or expenses:

(a) Are expressly authorized by statute;

...

(d) Are provided for in a written form agreement, signed by both the debtor and the licensee, and which has the prior approval of the director with respect to the terms of the agreement and amounts of the fees, interest, charges and expenses; or

(Emphasis added).

The standard this Court applies when interpreting statutes is well established:

Interpretation of a statute begins with an examination of the statute's literal words. Where the language of a statute is plain and unambiguous, courts give effect to the statute as written, without engaging in statutory construction. Only where the language is ambiguous will this Court look to rules of construction for guidance and consider the reasonableness of proposed interpretations.

Curlee, 148 Idaho at 398, 224 P.3d at 465 (citing *Idaho Conservation League, Inc. v. Idaho State Dep't of Agric.*, 143 Idaho 366, 368, 146 P.3d 632, 634 (2006) (internal citations omitted)). A statute "is ambiguous where reasonable minds might differ or be uncertain as to its meaning." *Payette River Prop. Owners Ass'n v. Bd. of Comm'rs of Valley Cnty.*, 132 Idaho 551, 557, 976 P.2d 477, 483 (1999) (citing *Ada Cnty. v. Gibson*, 126

Idaho 854, 856, 893 P.2d 801, 803 (Ct.App.1995)). “However, ambiguity is not established merely because the parties present differing interpretations to the court.” *Id.*

Stonebrook Const., LLC v. Chase Home Finance, LLC, 152 Idaho 927, 931, 277 P.3d 374, 378 (2012).

The Merriam Webster Dictionary defines “principal” as, “most important, consequential, or influential; chief”. MERRIAM-WEBSTER ONLINE (at www.m-w.com). It defines “obligation” as, “the action of obligating oneself to a course of action (as by a promise or vow).” *Id.* “Obligate” is defined as, “to bind legally or morally : constrain.” *Id.*

In this case, the contracts’ most important legal constraint (i.e. “principal obligation”) is the money Defendants owe Community Care for the services it provided. The attorney fees, while an integral part of the contract, are subordinate to the debt owing from the services provided by Community Care. In other words, the attorney fees are “incidental to the principal obligation” for purposes of Idaho Code § 26-2229A(4). This Court agrees with MRS that contractual attorney fees are an integral part of an underlying contract. *See Bank of Idaho v. Colley*, 103 Idaho 320, 326, 647 P.2d 775, 782 (Ct. App. 1982) (“The right to recover attorney fees is an integral part of the bank’s entitlement under the guaranty agreement.”). However, this Court disagrees with the argument made by MRS that being integral to the underlying contract is synonymous with being integral to the underlying obligation. As discussed above, the plain meaning of the terms does not support this conclusion.

The attorney fees MRS wishes to collect are incidental to the principal obligations owed by Defendants.

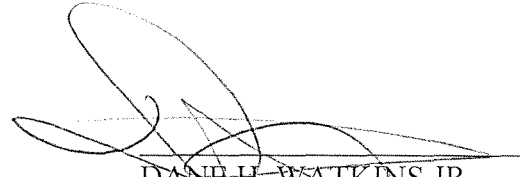
The magistrate court's default judgment should be affirmed.

IV. CONCLUSION AND ORDER

The magistrate court's default judgment is affirmed.

IT IS SO ORDERED.

DATED this 17 day of Jan 2018
3


DANIEL H. WATKINS JR.
District Judge

CERTIFICATE OF SERVICE

I hereby certify that on this 22 day of January 2012, I did send a true and correct copy of the foregoing document upon the parties listed below by mailing, with the correct postage thereon; by causing the same to be placed in the respective courthouse mailbox; or by causing the same to be hand-delivered.

Bryan N. Zollinger
SMITH, DRISCOLL, & ASSOCIATES, PLLC
P.O. Box 50731
Idaho Falls, ID 83405

Stephanie and Jason Strawn
248 Valley Dr.
Idaho Falls, ID 83401

Brandon and Renee Lewis
1142 E 21st St.
Idaho Falls, ID 83404

Joseph Knight
1542 Laprele St. Apt. 53
Idaho Falls, ID 83402

RONALD LONGMORE
Clerk of the District Court
Bonneville County, Idaho

By [Signature]
Deputy Clerk

Bryan N. Zollinger

ISB #8008

SMITH, DRISCOLL & ASSOCIATES, PLLC

414 Shoup Avenue

P.O. Box 50731

Idaho Falls, Idaho 83405

(208) 524-0731

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RECEIVED
MAGISTRATE DIVISION
IDaho Falls, ID

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE
MAGISTRATE DIVISION

MEDICAL RECOVERY SERVICES, LLC,
an Idaho limited liability company,

Plaintiff/Appellant,

vs.

STEPHANIE STRAWN and JASON
STRAWN, wife and husband

Defendants/Respondents.

Case No. CV-12-1171

**NOTICE OF APPEAL
\$101.00**

MEDICAL RECOVERY SERVICES, LLC,
an Idaho limited liability company,

Plaintiff/ Appellant,

vs.

BRANDON LEWIS and RENEE LEWIS,
husband and wife

Defendants/ Respondents.

Case No. CV-12-2164

MEDICAL RECOVERY SERVICES, LLC,
an Idaho limited liability company,

Plaintiff / Appellant,

vs.

JOSEPH KNIGHT

Defendant/ Respondent.

Case No. CV-12-2478

TO: THE ABOVE NAMED DEFENDANTS/RESPONDENTS, STEPHANIE AND JASON STRAWN, 248 VALLEY DR., IDAHO FALLS, ID 83401, BRANDON AND RENEE LEWIS, 1142 E 21ST STREET, IDAHO FALLS, ID 83404, JOSEPH KNIGHT, 1542 LAPRELE ST. APT 53, IDAHO FALLS, ID 83402 AND TO THE CLERK OF THE ABOVE-ENTITLED COURT:

NOTICE IS HEREBY GIVEN THAT:

1. The above-named appellant, MEDICAL RECOVERY SERVICES, LLC, an Idaho limited liability company, appeals to the Idaho Supreme Court from the Motion for Reconsideration denied on January 22, 2013, by the Honorable Dane H. Watkins, Jr., affirming the Default Judgment, cutting contractual attorney's fees and entered on April 13, 2012, by Magistrate Michelle Mallard, presiding over the Magistrate Court of the Seventh Judicial District of the State of Idaho, in and for the County of Bonneville.

2. Appellant has the right to appeal to the Supreme Court, and the memorandum decisions, orders, and judgment described in paragraph 1 above are subject to appeal pursuant to Rule 11(a), Idaho Appellate Rules.

3. The issues which the appellant intends to assert in the appeal are the following:

a. Did the Magistrate court commit reversible error when it did not award attorney's fees on default in an amount agreed to by the parties pursuant to a written contract?

b. Is Medical Recovery Services, LLC entitled to an award of attorney's fees on appeal under I.C. 12-120(1), (3) and (5) and I.A.R. 41?

4. There has been no order entered sealing any portion of the record in this case.

5. The appellant requests no transcript be prepared on appeal.

6. The appellant requests the following documents to be included in the clerk's record in addition to those automatically included under Rule 28, Idaho Appellate Rules: The entire Magistrate court file.

7. I certify:

- (a) That a copy of this notice of appeal has been served on the reporter;
- (b) That the plaintiff is exempt from paying the estimated transcript fee because the plaintiff requests that no transcript be prepared;
- (c) That the estimated fee for preparation of the clerk's record has been paid;
- (d) That the appellate filing fee has been paid;
- (e) That service has been made upon all parties required to be served pursuant to Rule 20, Idaho Appellate Rules.

DATED this 4th day of March, 2013.

SMITH, DRISCOLL & ASSOCIATES, PLLC

By: _____

Bryan N. Zollinger
Attorneys for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of March, 2013, I caused a true and correct copy of the forgoing **NOTICE OF APPEAL** to be served, by placing the same in a sealed envelope and depositing it in the U.S. Mail, postage prepaid, or hand delivery, facsimile transmission or overnight delivery, addressed to the following:

PARTIES SERVED:

- ☒ U.S. Mail
- ☐ Facsimile
- ☐ Hand Delivery
- ☐ Overnight Delivery

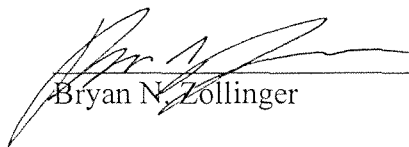
Stephanie and Jason Strawn
248 Valley Dr
Idaho Falls, ID 83401

- ☒ U.S. Mail
- ☐ Facsimile
- ☐ Hand Delivery
- ☐ Overnight Delivery

Brandon and Renee Lewis
1142 E 21st Street
Idaho Falls, ID 83404

- ☒ U.S. Mail
- ☐ Facsimile
- ☐ Hand Delivery
- ☐ Overnight Delivery

Joseph Knight
1542 Laprele St. Apt 53
Idaho Falls, ID 83402


Bryan N. Zollinger

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

MEDICAL RECOVERY SERVICES, LLC, an)
Idaho limited liability company,)
)
Plaintiff/Respondent,)
)
vs.)
)
STEPHANIE STRAWN and JASON STRAWN)
Wife and Husband,)
)
)
Defendant/Appellant.)
_____)

Case No. CV-2012-1171

Docket No 40827

**CLERK'S CERTIFICATION
OF EXHIBITS**

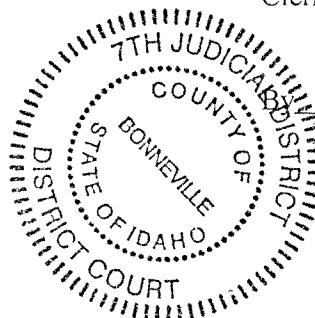
STATE OF IDAHO)
)
County of Bonneville)


I, Ronald Longmore, Clerk of the District Court of the Seventh Judicial District of the State of Idaho, in and for the County of Bonneville, do hereby certify that the foregoing Exhibits were marked for identification and offered in evidence, admitted, and used and considered by the Court in its determination:

No Exhibits Included.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the District Court
this 6 day of June, 2013.

RONALD LONGMORE
Clerk of the District Court




Deputy Clerk

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

MEDICAL RECOVERY SERVICES, LLC, an)
Idaho limited liability company,)

Plaintiff/Respondent,)

vs.)

STEPHANIE STRAWN and JASON STRAWN)
Wife and Husband,)

Defendant/Appellant.)

Case No. CV-2012-1171

Docket No 40827

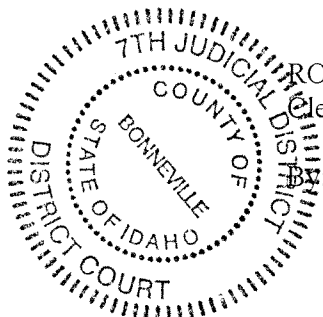
CLERK'S CERTIFICATE

STATE OF IDAHO)
County of Bonneville)

I, Ronald Longmore, Clerk of the District Court of the Seventh Judicial District of the State of Idaho, in and for the County of Bonneville, do hereby certify that the above and foregoing Record in the above-entitled cause was compiled and bound under my direction and is a true, correct and complete Record of the pleadings and documents as are automatically required under Rule 28 of the Idaho Appellate Rules.

I do further certify that all exhibits, offered or admitted in the aboveentitled cause, will be duly lodged with the Clerk of the Supreme Court along with the Court Reporter's Transcript (if requested) and the Clerk's Record as required by Rule 31 of the Idaho Appellate Rules.

IN WITNESS WHEREOF, I have hereunto set my hand affixed the seal of the District Court this
1 day of June, 2013.



RONALD LONGMORE
Clerk of the District Court

Deputy Clerk

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

MEDICAL RECOVERY SERVICES, LLC, an)
Idaho limited liability company,)

Plaintiff/Respondent,)

vs.)

STEPHANIE STRAWN and JASON STRAWN)
Wife and Husband,)

Defendant/Appellant.)
_____)

Case No. CV-2012-1171

Docket No 40827

CERTIFICATE OF SERVICE

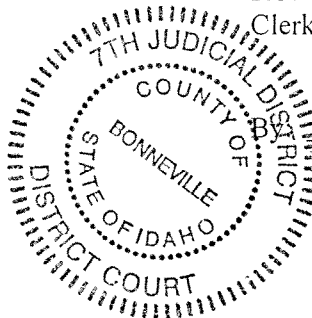
I HEREBY CERTIFY that on the 4 day of June, 2013, I served a copy of the Reporter's
Transcript (if requested) and the Clerk's Record in the Appeal to the Supreme Court in the above entitled
cause upon the following attorneys:

Bryan Zollinger
Smith, Driscoll & Associates, PLLC
P.O. Box
414 Shoup
Idaho Falls, ID 83405

Stephanie Strawn
Jason Strawn
248 Valley Dr.
Idaho Falls, ID 83401

by depositing a copy of each thereof in the United States mail, postage prepaid, in an envelope addressed
to said attorneys at the foregoing address, which is the last address of said attorneys known to me.

RONALD LONGMORE
Clerk of the District Court



[Signature]
Deputy Clerk